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IN THE

Supreme Court of the United States

October Term, 1968
No. 65

EVELLE J. YOUNGER, District Attorney of the County of LOS ANGELES, STATE OF CALIFORNIA,

Petitioner,

vs.

SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF LOS ANGELES,

Respondent,

SIRHAN BISHARA SIRHAN,

Real Party in Interest.

Petition for a Writ of Certiorari to the Court of Appeal and Supreme Court of California.

EVELLE J. YOUNGER,
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SIRHAN BISHARA SIRHAN,

Real Party in Interest.

Petition for a Writ of Certiorari to the Court of Appeal and Supreme Court of California.

Petitioner prays that a writ of certiorari issue to the California Court of Appeal, and to the Supreme Court of California, to review their judgment in denying a petition for a writ of mandate directed to the Superior Court of the State of California for the County of Los Angeles.

OPINION BELOW (ABSENT).

The California Court of Appeal denied the petition for a writ of mandate, without hearing or opinion, on September 25, 1968, under applicable California law, said denial became final immediately, except for an opportunity by the California Supreme Court to grant a

hearing in the matter. Such a hearing was duly requested by petitioner, but was denied, without any hearing or opinion, on October 3, 1968.

JURISDICTION.

The judgment of the California Court of Appeal became final on October 3, 1968, by denial of a hearing of the Supreme Court of the State of California. The jurisdiction of this court is invoked under 28 U.S.C. 1257(3), in that petitioner is claiming a right, privilege and immunity specially set up and claimed under the Constitution of the United States. This is the right of freedom of speech, and of the press, as guaranteed by the First and Fourteenth Amendments to the United States Constitution.

Pursuant to Rule 23(1)(f), to show the history of the raising of this question in the state courts, petitioner has attached to this petition, as an Appendix I, a copy of his petition for a hearing in the Supreme Court of California. This incorporates all proceedings prior to the denial of a hearing by the California Supreme Court. Petitioner asks that Appendix I be included in this petition by reference, as though set out herein in *haec verba.*

A brief partial résumé thereof is:

On June 7, 1968, the real party in interest was indicted for the murder of United States Senator Robert Kennedy. The same day, the respondent Superior Court issued the "Order re Publicity." Petitioner unsuccessfully sought to have this order modified, but on August 2, 1968, the order, in substantially its original form, was continued in effect. [Original order is at Appendix I, Ex. 1-A; final order, at *ibid.*, Ex. 1-E.]

Under state law, no appeal lay from the action of the respondent Superior Court, so petitioner's only remedy was by way of a petition for a writ of mandate in the Court of Appeal [Appendix I, Ex. 1]. This was duly sought about September 10, 1968 [Appendix I, Ex. 1], and was denied without either hearing or opinion [*Ibid.*, Ex. 2], which denial became final, as indicated above, on October 3, 1968.

RECORD BELOW.

On October 14, 1968, petitioner filed a notice of intention to petitioner for certiorari, and request for certification of record, in the California Court of Appeal. We have attached this hereto as Appendix II. Because of the nearness of this trial date, Petitioner respectfully requests that, if necessary, this court consider this petition on the basis of the proceedings as are incorporated as the exhibits to petitioner's Petition for Hearing in the California Supreme Court, which is attached hereto as Appendix I.

On October 14, 1968, the respondent Superior Court heard a defense motion for a continuance in the underlying prosecution, *People of the State of California v. Sirhan Bishara Sirhan,* L.A. Crim. No. A-233 421, and refixed the trial date for December 9, 1968.

QUESTION PRESENTED.

Whether the United States Constitution provides any judicial remedy in cases where a trial court *fails to balance* the right of free speech and a free press, as against the need for a fair trial, in that the trial court gives *no weight* whatsoever to the First Amendment, free speech and free press rights, by totally suppressing the public's only possible sources of information about a

matter of the most intense public interest? This will be discussed more fully below.

REASONS FOR GRANTING CERTIORARI.

Introduction: the following are those petitioner believes are particularly germane to the grant of certiorari; we ask that the Court also consider matter addressed to trial court, asking it to modify its order, as is set out in Appendix I, Exhibit 1-D.

(1) *The subject matter is appropriate.* In view of the numerous recent decisions of this Court in the area of both First Amendment rights (free speech and free press are here in issue), and Fourteenth Amendment due process rights (the fair trial principle here involved), the subject matter is appropriate for consideration.

We next consider whether the instant case is appropriate in that it is either of great importance itself, or the importance of the issues it presents are of great importance in that they extend far beyond the mere interests of the parties to this lawsuit itself. Petitioner respectfully submits this cause qualifies on both grounds, for the following reasons:

(2) *The instant case merits consideration.*

(a) The Instant Case Is One of First Instance in Seeking to Establish Consideration for the Constitutional Free Speech and Free Press Rights, at Least to Be Balanced Against Constitutional Due Process Rights.

So far, cases have involved a convicted defendant, who seeks to overturn his conviction by claiming denial of a fair trial by reason of undue publicity. Naturally, opportunities to litigate and adjudicate the "free press-fair trial" problem will usually arise this way. However, we submit that this Court will do the nation a disservice if it only looks at problems involving Constitutional conflicts from one point of view. In the "free press-fair trial" area this may lead to a result this Court has often, in other contexts, rejected: causing lower courts, from fear of reversals, to resolve this issue by making as broad a "gag" order as is possible without restricting access to witnesses. This will have the inhibiting effect on exercise of First Amendment rights which this Court has long refused to tolerate (going back at least to the *prior restraint* prohibition of *Near v. Minnesota,* 283 U.S. 697). The mere possible danger of inhibiting booksellers has also proven sufficient to limit the power of states to cast on booksellers the affirmative duty to determine whether their wares are obscene.

Thus, to develop a balance between competing Constitutional rights, it will be necessary for this Court, *at some time,* to consider a case wherein a trial court has gone too far in abridging the First Amendment rights.

Petitioner submits the instant case is as appropriate a one as is likely to arise in this area, particularly in

view of the public importance of the underlying events, which we will now consider.

(b) The Importance of the Underlying Events Alone Are Sufficient to Make This a Case of Great Importance.

Petitioner submits that we should not ignore that, *for ample and serious reasons*, there is world wide interest in the events underlying this petition. This interest involves weighty interests of state, *i.e.*, matters having national and even international political significance. We stress this because it contrasts so vividly with what seems to be the usual reasons causing a criminal case to have high publicity value, such as a spectacular crime, or some sort of scandle involving entertainment celebrities. Petitioner stresses this because political and governmental questions (rather than gossip columns and titillating scandals) have always been considered as lying at the heart of the reasons for the existence of freedom of speech and of the press.

(c) The Trial Court's Order Will Prevent Responsible Answer to Irresponsible Attacks on Governmental and Judicial Process.

A further reason for allowing *some* comment or dissemination of news in this matter is the obvious danger that there will be irresponsible charges or rumors circulated about these events. Petitioner stresses this as a separate topic because *this danger is very real and present:* we need look no further than the murder of President Kennedy, the brother of the deceased Senator-Presidential candidate, to see how far such charges can go. The irresponsible attacks on the Warren Commission show that no matter how impartial, distin-

guished, disinterested, or diverse the politics, of an investigative body are, fantastic charges may be levied.

Surely this danger is greatly increased when disclosure is limited to a trial conducted under the often restrictive rules of evidence in criminal cases, with but a single judge, and a jury which does not render a reasoned opinion with its verdict.

Petitioner submits the only feasible way to meet this danger of false charges and rumors is to allow responsible public officials to indicate, on occasion, why certain witnesses have not been used, or how certain leads have proven false or irrelevent. Only by this means can we reasonably expect to do something nearly as important as justice (or a fair trial) for a free society: *showing that justice is in fact done.*

(d) This Matter Must Be Considered Now or It Will Become Moot.

If certiorari is now denied, the trial will be held subject to the "order re publicity" under attack herein. Once the criminal trial has been concluded, there will be no opportunity to test the order on appeal, since (i) the People cannot appeal an acquittal and (ii) the real party in interest, in acquiescing in the order, cannot raise this point on appeal if convicted. A conviction would mean that information the public is entitled to could not be released *until both trial and appeal are concluded.*[1] By California law, an appeal is automatic in a death penalty case. California Penal Code 1239(b).

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[1]While the order does not specify its own duration, ordinary prudence would keep all connected with the prosecution from violating it unless and until a conviction became final, in order not to prejudice the People's position in event a reversal required a retrial.

This may well take two years, even if no reversal and retrial is involved.

The vice of the trial court's order is it inhibits exercise of First Amendment right of both persons to speak, and of the public to know, throughout that period.

(e) The Trial Court's Order Is an Unconstitutional Suppression of First Amendment Rights Because It Is Unsupported by Any Showing That Exercise of Those Rights Would Infringe Upon Defendant's Right to a Fair Trial.

As the trial court's order was issued *sua sponte,* we submit this does not do away with the basic requirement that there be some basis for its suppression of free speech and freedom of the press. Thus the order appears to rest on the unproved theory that any utterances of the type banned could only tend to defeat a fair trial. Petitioner submits that free speech is too vital a right in a free society to be so lightly disregarded.

CONCLUSION.

For the foregoing reasons the petition for a writ of certiorari should be granted, together with any further relief this Court may deem just and proper, considering the nearness of the underlying trial now set for December 9, 1968.

Respectfully submitted,

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Petitioner in Propria Persona.